

2009 FEB 17 AM 11:46

JEANNE HICKS, CLERK

BY: N. Sequin

1 Larry A. Hammond, 004049
2 Anne M. Chapman, 025965
3 OSBORN MALEDON, P.A.
4 2929 N. Central Avenue, 21st Floor
5 Phoenix, Arizona 85012-2793
6 (602) 640-9000
7 E-mail: lhammond@omlaw.com
8 E-mail: achapman@omlaw.com

9 John M. Sears, 005617
10 107 North Cortez Street
11 Suite 104
12 Prescott, Arizona 86301
13 (928) 778-5208
14 E-mail: John.Sears@azbar.org

15 Attorneys for Defendant

16 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

17 IN AND FOR THE COUNTY OF YAVAPAI

18 STATE OF ARIZONA,

19 Plaintiff,

20 vs.

21 STEVEN CARROLL DEMOCKER,

22 Defendant.

) No. CR 2008-1339

) Div. 6

) DEFENDANT'S REPLY TO
) STATE'S OPPOSITION TO
) MOTION FOR REEXAMINATION
) OF CONDITIONS OF RELEASE

) (Oral Argument Requested)

23 Defendant Steven C. DeMocker, by and through counsel, hereby replies to the
24 State's Opposition to his Motion for Reexamination of Conditions of Release. Mr.
25 DeMocker requests that this court reexamine his conditions of release, pursuant to Ariz.
26 R. Crim. Pro. 7.4(b) and A.R.S. § 13-3967(G) and provide notice to any person having
27 declared victim status in the case in advance of any order amending conditions pursuant
28 to A.R.S. §§ 13-3967(G) and 13-4406.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ARGUMENT

The State does not dispute that Mr. DeMocker is entitled to have his conditions of release reviewed by this Court and that the Court may amend the conditions to employ different or additional conditions of release, including a reduction in bail. A.R.S. § 13-3967(G). Nor does the State disagree that material facts not previously presented to the Court are available. Ariz. R. Crim. P. 7.4(b).

The State's Opposition asserts only that Mr. DeMocker is not entitled to an evidentiary hearing, relying on *Mendez v. Robertson*, 202 Ariz. 128, 42 P.3d 14 (Ariz. App. 2002). As a preliminary matter, Mr. DeMocker did not request an evidentiary hearing. Furthermore, the *Mendez* Court did not hold that a defendant is not entitled to an evidentiary hearing. In fact, the Court held that Mr. Mendez "had a right to be heard" on his conditions of release and that his evidentiary hearing, which included testimony but precluded the defendant from cross-examining the victim, was sufficient. Mr. DeMocker, like Mr. Mendez, has a right to be heard on his conditions of release.

The State asserts that because it is seeking the death penalty and because, in its view, Mr. DeMocker is a flight risk, a \$2.5 million dollar bond is appropriate. As the Court found in its *Simpson* order, Mr. DeMocker's initial considerations of fleeing are arguably consistent with his innocence. The State does not address the most critical fact with respect to Mr. DeMocker's alleged risk of flight; Mr. DeMocker did not flee. He did not flee for four months while he was the sole suspect in this case and after public announcements of an imminent arrest were made.

The State's Opposition does not address any of the other factors under A.R.S. § 13-3967(B) that weigh heavily in favor of substantially reducing Mr. DeMocker's bond amount from \$2,500,000. The weight of the evidence; Mr. DeMocker's family ties; his employment, character and mental condition; the absence of any illegal drug issues; the length of Mr. DeMocker's residence in the community; his lack of any prior arrests or

1 convictions; and his staying put during four months of intensive investigation and
2 prejudicial publicity in the face of an impending arrest are all factors that weigh in favor
3 of a reduction in the amount of bond.

4 The State also does not dispute that GPS monitoring can help reassure the Court
5 of Mr. DeMocker's future appearance, consistent with his previous behavior in this
6 case.

7 **CONCLUSION**

8 For these reasons Mr. DeMocker respectfully requests that the Court set
9 argument on this motion, set a bond at a reasonable, reduced amount, to be posted with
10 cash or a secured appearance bond through a bail bondsman, and order GPS electronic
11 monitoring by ankle bracelet.

12 DATED this 17th day of February, 2009.

13
14 By: 

15 John Sears
16 107 North Cortez Street, Suite 104
17 Prescott, Arizona 86301

18 OSBORN MALEDON, P.A.
19 Larry A. Hammond
20 Anne M. Chapman
21 2929 N. Central Avenue, Suite 2100
22 Phoenix, Arizona 85012-2793

23 Attorneys for Defendant

24 ORIGINAL of the foregoing filed
25 this 17th day of February, 2009, with:

26 Jeanne Hicks,
27 Clerk of the Court
28 Yavapai County Superior Court
120 S. Cortez
Prescott, AZ 86303

1 COPIES of the foregoing hand delivered
2 this 17th day of February, 2009, to:

3 The Hon. Thomas B. Lindberg
4 Judge of the Superior Court
5 Division Six
6 120 S. Cortez
7 Prescott, AZ 86303

8 Mark K. Ainley, Esq.
9 Office of the Yavapai County Attorney
10 255 E. Gurley
11 Prescott, AZ 86301-3868


